

AMENDED IN ASSEMBLY APRIL 18, 2013

AMENDED IN ASSEMBLY MARCH 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1005

Introduced by Assembly Member Alejo
(*Coauthor: Senator Corbett*)

February 22, 2013

An act to amend Section 12011.5 of the Government Code, relating to judicial appointments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1005, as amended, Alejo. Judicial appointments: demographic data.

Existing law requires the Governor, the designated agency of the State Bar responsible for the evaluation of judicial candidates, and the Administrative Office of the Courts to annually collect demographic data relating to judicial applicants, judicial appointees or nominees, judicial candidates, and justices and judges, as specified, relative to ethnicity, race, and gender. These entities are required to release the demographic data on or before March 1 of each year.

This bill would expand these provisions to include the collection and release of demographic data relative to *physical* disability and veteran status, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12011.5 of the Government Code is amended to read:

12011.5. (a) In the event of a vacancy in a judicial office to be filled by appointment of the Governor, or in the event that a declaration of candidacy is not filed by a judge and the Governor is required under subdivision (d) of Section 16 of Article VI of the California Constitution to nominate a candidate, the Governor shall first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for the judicial office for evaluation of their judicial qualifications.

(b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Section 6013.5 of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, gender, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision. Each member of the designated agency of the State Bar responsible for evaluation of judicial candidates shall complete a minimum of 60 minutes of training in the areas of fairness and bias in the judicial appointments process at an orientation for new members. If the member serves more than one term, the member shall complete an additional 60 minutes of that training during the member's service on the designated agency of the State Bar responsible for evaluation of judicial candidates.

(c) Upon receipt from the Governor of the names of candidates for judicial office and their completed personal data questionnaires, the State Bar shall employ appropriate confidential procedures to evaluate and determine the qualifications of each candidate with regard to his or her ability to discharge the judicial duties of the

1 office to which the appointment or nomination shall be made.
2 Within 90 days of submission by the Governor of the name of a
3 potential appointee for judicial office, the State Bar shall report in
4 confidence to the Governor its recommendation whether the
5 candidate is exceptionally well qualified, well qualified, qualified,
6 or not qualified and the reasons therefor, and may report, in
7 confidence, other information as the State Bar deems pertinent to
8 the qualifications of the candidate.

9 (d) In determining the qualifications of a candidate for judicial
10 office, the State Bar shall consider, among other appropriate
11 factors, his or her industry, judicial temperament, honesty,
12 objectivity, community respect, integrity, health, ability, and legal
13 experience. The State Bar shall consider legal experience broadly,
14 including, but not limited to, litigation and nonlitigation experience,
15 legal work for a business or nonprofit entity, experience as a law
16 professor or other academic position, legal work in any of the three
17 branches of government, and legal work in dispute resolution.

18 (e) The State Bar shall establish and promulgate rules and
19 procedures regarding the investigation of the qualifications of
20 candidates for judicial office by the designated agency. These rules
21 and procedures shall establish appropriate, confidential methods
22 for disclosing to the candidate the subject matter of substantial and
23 credible adverse allegations received regarding the candidate's
24 health, physical or mental condition, or moral turpitude which,
25 unless rebutted, would be determinative of the candidate's
26 unsuitability for judicial office. No provision of this section shall
27 be construed as requiring that any rule or procedure be adopted
28 that permits the disclosure to the candidate of information from
29 which the candidate may infer the source, and no information shall
30 either be disclosed to the candidate nor be obtainable by any
31 process that would jeopardize the confidentiality of
32 communications from persons whose opinion has been sought on
33 the candidate's qualifications.

34 (f) All communications, written, verbal, or otherwise, of and to
35 the Governor, the Governor's authorized agents or employees,
36 including, but not limited to, the Governor's Legal Affairs
37 Secretary and Appointments Secretary, or of and to the State Bar
38 in furtherance of the purposes of this section are absolutely
39 privileged from disclosure and confidential, and any
40 communication made in the discretion of the Governor or the State

1 Bar with a candidate or person providing information in furtherance
2 of the purposes of this section shall not constitute a waiver of the
3 privilege or a breach of confidentiality.

4 (g) If the Governor has appointed a person to a trial court who
5 has been found not qualified by the designated agency, the State
6 Bar may make public this fact after due notice to the appointee of
7 its intention to do so, but that notice or disclosure shall not
8 constitute a waiver of privilege or breach of confidentiality with
9 respect to communications of or to the State Bar concerning the
10 qualifications of the appointee.

11 (h) If the Governor has nominated or appointed a person to the
12 Supreme Court or court of appeal in accordance with subdivision
13 (d) of Section 16 of Article VI of the California Constitution, the
14 Commission on Judicial Appointments may invite, or the State
15 Bar's governing board or its designated agency may submit to the
16 commission, its recommendation, and the reasons therefor, but
17 that disclosure shall not constitute a waiver of privilege or breach
18 of confidentiality with respect to communications of or to the State
19 Bar concerning the qualifications of the nominee or appointee.

20 (i) No person or entity shall be liable for any injury caused by
21 any act or failure to act, be it negligent, intentional, discretionary,
22 or otherwise, in the furtherance of the purposes of this section,
23 including, but not limited to, providing or receiving any
24 information, making any recommendations, and giving any reasons
25 therefor. As used in this section, the term "State Bar" means its
26 governing board and members thereof, the designated agency of
27 the State Bar and members thereof, and employees and agents of
28 the State Bar.

29 (j) At any time prior to the receipt of the report from the State
30 Bar specified in subdivision (c) the Governor may withdraw the
31 name of any person submitted to the State Bar for evaluation
32 pursuant to this section.

33 (k) A candidate for judicial office shall not be appointed until
34 the State Bar has reported to the Governor pursuant to this section,
35 or until 90 days have elapsed after submission of the candidate's
36 name to the State Bar, whichever occurs earlier. The requirement
37 of this subdivision shall not apply to any vacancy in judicial office
38 occurring within the 90 days preceding the expiration of the
39 Governor's term of office, provided, however, that with respect
40 to those vacancies and with respect to nominations pursuant to

1 subdivision (d) of Section 16 of Article VI of the California
2 Constitution, the Governor shall be required to submit any
3 candidate's name to the State Bar in order to provide an
4 opportunity, if time permits, to make an evaluation.

5 (l) Nothing in this section shall be construed as imposing an
6 additional requirement for an appointment or nomination to judicial
7 office, nor shall anything in this section be construed as adding
8 any additional qualifications for the office of a judge.

9 (m) The Board of Governors of the State Bar shall not conduct
10 or participate in, or authorize any committee, agency, employee,
11 or commission of the State Bar to conduct or participate in, any
12 evaluation, review, or report on the qualifications, integrity,
13 diligence, or judicial ability of any specific justice of a court
14 provided for in Section 2 or 3 of Article VI of the California
15 Constitution without prior review and statutory authorization by
16 the Legislature, except an evaluation, review, or report on potential
17 judicial appointees or nominees as authorized by this section.

18 The provisions of this subdivision shall not be construed to
19 prohibit a member of the State Bar from conducting or participating
20 in an evaluation, review, or report in his or her individual capacity.

21 (n) (1) Notwithstanding any other provision of this section, but
22 subject to paragraph (2), on or before March 1 of each year for the
23 prior calendar year, all of the following shall occur:

24 (A) The Governor shall collect and release, on an aggregate
25 statewide basis, all of the following:

26 (i) Demographic data provided by all judicial applicants relative
27 to ethnicity, race, *physical* disability, as defined ~~by the federal~~
28 ~~Americans with Disabilities Act (42 U.S.C. Sec. 12102), in~~
29 *subdivision (l) of Section 12926*, veteran status, as defined in
30 Section 101(2) of Title 38 of the United States Code, gender,
31 gender identity, and sexual orientation.

32 (ii) Demographic data relative to ethnicity, race, *physical*
33 disability, as defined ~~by the federal Americans with Disabilities~~
34 ~~Act (42 U.S.C. Sec. 12102), in subdivision (l) of Section 12926~~,
35 veteran status, as defined in Section 101(2) of Title 38 of the United
36 States Code, gender, gender identity, and sexual orientation as
37 provided by all judicial applicants, both as to those judicial
38 applicants who have been and those who have not been submitted
39 to the State Bar for evaluation.

1 (iii) Demographic data relative to ethnicity, race, *physical*
2 disability, as defined ~~by the federal Americans with Disabilities~~
3 ~~Act (42 U.S.C. Sec. 12102)~~, *in subdivision (l) of Section 12926*,
4 veteran status, as defined in Section 101(2) of Title 38 of the United
5 States Code, gender, gender identity, and sexual orientation of all
6 judicial appointments or nominations as provided by the judicial
7 appointee or nominee.

8 (B) The designated agency of the State Bar responsible for
9 evaluation of judicial candidates shall collect and release both of
10 the following on an aggregate statewide basis:

11 (i) Statewide demographic data provided by all judicial
12 applicants reviewed relative to ethnicity, race, *physical* disability,
13 as defined ~~by the federal Americans with Disabilities Act (42~~
14 ~~U.S.C. Sec. 12102)~~, *in subdivision (l) of Section 12926*, veteran
15 status, as defined in Section 101(2) of Title 38 of the United States
16 Code, gender, gender identity, sexual orientation, and areas of
17 legal practice and employment.

18 (ii) The statewide summary of the recommendations of the
19 designated agency of the State Bar by ethnicity, race, *physical*
20 disability, as defined ~~by the federal Americans with Disabilities~~
21 ~~Act (42 U.S.C. Sec. 12102)~~, *in subdivision (l) of Section 12926*,
22 veteran status, as defined in Section 101(2) of Title 38 of the United
23 States Code, gender, gender identity, sexual orientation, and areas
24 of legal practice and employment.

25 (C) The Administrative Office of the Courts shall collect and
26 release the demographic data provided by justices and judges
27 described in Article VI of the California Constitution relative to
28 ethnicity, race, *physical* disability, as defined ~~by the federal~~
29 ~~Americans with Disabilities Act (42 U.S.C. Sec. 12102)~~, *in*
30 *subdivision (l) of Section 12926*, veteran status, as defined in
31 Section 101(2) of Title 38 of the United States Code, gender,
32 gender identity, and sexual orientation by specific jurisdiction.

33 (2) For purposes of subparagraph (A) of paragraph (1), in the
34 year following a general election or recall election that will result
35 in a new Governor taking office prior to March 1, the departing
36 Governor shall provide all of the demographic data collected for
37 the year by that Governor pursuant to this subdivision to the
38 incoming Governor. The incoming Governor shall then be
39 responsible for releasing the provided demographic data, and the

1 demographic data collected by that incoming Governor, if any,
2 prior to the March 1 deadline imposed pursuant to this subdivision.

3 (3) Any demographic data disclosed or released pursuant to this
4 subdivision shall disclose only aggregated statistical data and shall
5 not identify any individual applicant, justice, or judge.

6 (4) The State Bar and the Administrative Office of the Courts
7 shall use the following ethnic and racial categories: American
8 Indian or Alaska Native, Asian, Black or African American,
9 Hispanic or Latino, Native Hawaiian or other Pacific Islander,
10 White, some other race, and more than one race, as those categories
11 are defined by the United States Census Bureau for the 2010
12 Census for reporting purposes.

13 (5) Any demographic data disclosed or released pursuant to this
14 subdivision shall also indicate the percentage of respondents who
15 declined to respond.

16 (o) Members of judicial selection advisory committees are
17 encouraged to recommend candidates from diverse backgrounds
18 and cultures reflecting the demographics of California.

19 (p) If any provision of this section other than a provision relating
20 to or providing for confidentiality or privilege from disclosure of
21 any communication or matter, or the application of the provision
22 to any person or circumstances, is held invalid, the remainder of
23 this section to the extent it can be given effect, or the application
24 of the provision to persons or circumstances other than those as
25 to which it is held invalid, shall not be affected thereby, and to this
26 extent the provisions of this section are severable. If any other act
27 of the Legislature conflicts with the provisions of this section, this
28 section shall prevail.